

## FORMAL ISSUE PAPER

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

Issue Paper Number 99-014



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

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## REGULATION 1589, CONTAINERS AND LABELS REGULATION 1630, PACKERS LOADERS AND SHIPPERS

### I. Issue

Should Sales and Use Tax Regulations 1589 and 1630 be amended as proposed by industry to exempt the sale or lease of all containers used for the transport of food for human consumption, as well as various gases, salts, acids, caustics and other preservatives applied after harvest and used to condition or preserve the product during shipment. Industry has made a concurrent proposal to amend Regulation 1589 to define what constitutes a nonreturnable container.

### II. Staff Recommendation

The proposed revision to Regulation 1589 to exempt all containers associated with the transport of food for human consumption would require a statutory change to Revenue and Taxation Code section 6364. However, there is no statutory restriction in regard to industry's proposed amendment to define what constitutes a nonreturnable container. Consequently staff is recommending this revision to Regulation 1589 be adopted. Additionally, staff is recommending a revision to Regulation 1589 to clarify the existing application of tax to leased returnable containers and, in the case of a lease of a returnable container that is a continuing sale, to establish the minimum term upon which tax applies on the first lease.

The proposal to exempt gases and preservatives that are not physically incorporated into the finished product would also require a statutory change. Consequently, staff does not recommend the Board adopt industry's proposal. However, staff is recommending a revision to Regulation 1630 to clarify that specified tangible personal property purchased and physically incorporated into the product being sold can be purchased for resale.

### III. Other Alternative(s) Considered

Adopt industry's proposed amendments to Regulations 1589 and 1630 to exempt all returnable and nonreturnable containers, define when a container is not customarily returned, and exempt gases and preservatives used in the transportation of food for human consumption.

## **IV. Background**

### **A. General**

As a result of the February 4, 1999 meeting with industry, the food growing and food processing industries have proposed amendments to Sales and Use Tax Regulation 1589, Containers and Labels, and Regulation 1630, Packers, Loaders, and Shippers. A comparison between the current language of Regulation 1589 and Regulation 1630 and the proposed amendments are attached as Exhibit 1 and 2 respectively.

Subsequent to their original proposal, industry has provided an alternative proposal. This proposal would amend only Regulation 1589 and is intended to define what constitutes a non-returnable container. The comparison of the current text of Regulation 1589 and this proposed language is also included in Exhibit 1.

The industry believes there is an uneven playing field in the area of returnable containers, specifically rental pallets and bins used to ship processed produce. Industry feels a regulatory amendment can level the field. As explained in correspondence from CHEP Pooling Systems (CHEP) and the Reusable Pallet & Container Coalition (RPCC), other states attempt to align their taxing policies in favor of the states' environmental policy, thus helping to achieve the states' environmental goals. CHEP points out that California has the most aggressive solid waste laws, yet the sales tax laws penalize the use of reusable rented pallets and returnable containers, in effect supporting the use of disposable over reusable containers.

Californians Against Waste (CAW), an environmental advocacy group focusing on the promotion of waste reduction, has also supported CHEP's position.

### **Industry Proposals**

Industry initially proposed amendments to Regulation 1589 and Regulation 1630 that would exempt the following from tax:

1. The sale or lease of all containers, returnable and nonreturnable, when associated with the transportation of food products for human consumption.
2. Miscellaneous preservatives used in packaging food products.
3. Beneficial insects used as a substitute or in conjunction with chemical crop protection agents, including but not limited to Aphytis Melinus, an insect used to combat red scale.
4. Food packing equipment including but not limited to lines, computers, and graders.
5. Low volume water saving irrigation equipment.

Some of the industry proposal extends beyond the scope of Regulation 1589 and Regulation 1630. After a March 1, 1999 meeting, industry limited their proposed amendments to items one (1) and two (2) above.

Although industry's initially proposed revisions to Regulation 1589 and Regulation 1630 would affect all containers, industry is focused on two areas. First, reusable bins used to ship tomato paste and other food products, and second, the lease of reusable pallets. Both of these items currently are considered returnable containers, with the initial sale or purchase of the container subject to tax as prescribed by Revenue and Taxation Code section 6364. The intent of industry's initial proposal is to exempt both of these containers. Industry's proposed amendments to Regulation 1589 would exempt all containers when used to transport food products. Industry's proposed amendment to Regulation 1630 would reclassify gases and preservatives to items that are part of a container.

As a result of two meetings and subsequent discussions, industry made an alternative proposal to amend Regulation 1589 to define when containers are considered not customarily returned. While industry's proposed amendment would apply to containers in general, the emphasis is to exempt reusable bins used to ship produce. The proposed language would result in reclassifying reusable bins, as well as other containers that meet the proposed criteria, from returnable containers to non-returnable containers. The proposal would not, however, affect the status of leased pallets since title to leased containers is retained by the lessor. Currently Regulation 1589 defines a returnable container as one that is customarily returned. The proposed amendment would add the following criteria to the definition, as well as add an example:

A container is not customarily returned by a buyer when:

1. the container is sold together with the contents;
2. no deposit is charged on the container;
3. title to the container is not retained;
4. there is no obligation to repurchase the container;
5. the container is of a type that is fungible;
6. the container is repurchased without regard to whether it is the same container originally sold; and
7. the repurchaser of the container is in an industry that includes at least three participants.

Example: A tomato paste processor purchases a new or used container. There are more than three tomato paste processors in the industry. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor, who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. This container is not customarily returned by the buyer.

## Discussion

Industry first proposes a revision to Regulation 1589 that would exempt the sale or lease of all returnable containers when associated with the transportation of food products for human consumption.

The environmental concerns expressed by industry are valid points and industry is to be commended for environmentally friendly advances in container technology and actively seeking resolution to their concern. Revenue and Taxation Code section 6364, Containers, however, provides an exemption for the sale, storage, use, or other consumption of containers only under the following circumstances:

- The sale of **non-returnable** containers sold to persons who will fill the containers with a product and sell the container with the product.
- The sale of **returnable and nonreturnable containers** when the container is sold along with an exempt product, and
- The sale of **returnable** containers when sold along with a taxable product or sold for refilling.

Section 6364 limits the exemption of returnable containers to when they are sold with the products, or when they are sold for refilling. The initial sale or lease of returnable containers is subject to tax.

Industry's alternative proposal to amend Regulation 1589 to define what constitutes "customarily returned" may be accomplished without statutory change. The controlling statute, section 6364 defines returnable containers as follows:

As used herein the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

The proposed amendment to Regulation 1589 would define when a container is not customarily returned. If a container meets the criteria established in the proposed revision, the container is a non-returnable container and tax will not apply.

Industry's alternative proposal would provide the exemption sought for reusable bins used to ship processed produce, but would not provide an exemption for leased pallets since title to the leased pallets remains with the lessor. It should be noted that industry's alternative proposal does not restrict itself to containers associated with food for human consumption. The amendment may result in reclassifying a wide range of containers from returnable to nonreturnable. Since this is a proposed regulatory change and lacking an operative date, it may also initiate claims for refund for periods open to statute. Based on industry's representation that only containers used for shipment of food products for human consumption are customarily used in the manner described, staff has revised industry's proposed language to meet this end. If the Board finds, as a matter of fact, that within the food industry the containers in question are not customarily returned, a regulation change would be appropriate.

Due to the specific language of section 6364, staff believes industry should pursue a statutory change to achieve the desired exemption for leased pallets. To this end, staff has worked with industry to draft specific statutory language to accomplish such an objective. Industry-sponsored Senate Bill 1210 would provide the statutory language necessary to exempt leased pallets. The Board supported Senate Bill 1210 at their April 22, 1999 Board meeting. Industry still maintains regulatory changes can accomplish their objective with regard to leased pallets.

Staff does recommend, however, a revision to Regulation 1589 to clarify the existing application of tax to leased returnable containers. Staff proposed that the regulation be amended to provide that in the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days, whichever is greater and that any subsequent lease of the container for refilling is not subject to tax.

Industry's second proposal seeks to exempt gases and preservatives by reclassifying them to become part of the container, a proposal which staff believes would require statutory authority that is not currently in the Sales and Use Tax Law. The sale of a preservative, however, that is physically incorporated into the product would already be nontaxable as a sale for resale under existing law. Likewise, the sale of a preservative that remains in the packaged food product until opened by the ultimate consumer is also sold for resale. Staff is recommending a revision to Regulation 1630 to clarify that tangible personal property purchased and physically incorporated into the product being sold, such as wax and fungicide, post harvest protective shields, and protective coatings, as well as gases and preservatives that remain in the packaged food product until opened by the ultimate consumer, can be purchased for resale under existing law.

Industry also proposes an exemption for preservative products included in the shipping containers of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These products include moisture-absorbing desiccants, gas-absorbing ethylene sachets, gas emitting sulfur dioxide pads, all of which prevent the growth of molds and bacteria in fresh produce during shipment. Staff believes a statutory change is required to exempt preservatives that are not physically incorporated in the food product being sold. Staff does not agree with industry's proposal unless the preservative product remains in the packaged food product until opened by the ultimate consumer. To address the concept proposed by industry, staff is suggesting language for amendment to Regulation 1630 to specifically exempt these types of preservative products from tax should the Board decide to approve industry's proposal and find a statutory change is not required.

## **Conclusion**

Industry's original proposal to revise Regulation 1589 to exempt all containers used in conjunction with the transportation and shipping of food for human consumption would require a statutory change.

Industry's alternative proposal to revise Regulation 1589 to define when a container is not customarily returned does not require a statutory change. The effects, however, are far more wide ranging than industry's expressed purpose of covering only reusable containers used to ship food for human consumption. For this reason, it is recommended the Board adopt staff's suggested revision to industry's language, which limits the proposal to containers used for shipment of food products for human consumption.

Industry's original proposal to revise Regulation 1630 to reclassify gases and preservatives as exempt containers would also require a statutory change. It is recommended the Board adopt staff's revision to Regulation 1630 to clarify that tangible personal property purchased and physically incorporated into the finished product being sold, such as wax and fungicide, post harvest protective shields, protective coatings, salts, acids, and caustics, can be purchased for resale. It is further recommended that should the Board wish to include as exempt containers desiccants, ethylene sachets, sulfur dioxide pads, and products which serve the same purpose, if sold with exempt food products, staff's proposed language be adopted.

## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Adopt the proposed amendment to Regulation 1589 to define what constitutes customarily returned using staff's suggested language.

Adopt staff's proposed amendment to Regulation 1630 to clarify that tangible personal property purchased and physically incorporated into the product being sold, such as wax and fungicide, post harvest protective shields, protective coatings, salts, acids and caustics can be purchased for resale. It is further recommended that should the Board wish to include as exempt containers desiccants, ethylene sachets, sulfur dioxide pads, and products which serve the same purpose, if sold with exempt food products, staff's proposed language be adopted.

### **B. Pros of the Staff Recommendation**

Containers that meet the criteria provided in the proposed regulation would be classified as nonreturnable. This would reclassify many containers, which are currently considered taxable returnable containers to nontaxable nonreturnable containers.

Existing law relating to waxes and fungicides, post harvest protective shields, and protective coating, when physically incorporated into the product being sold, would be clarified.

**C. Cons of the Staff Recommendation**

Limits the exemption to containers used for the shipment of food products for human consumption. Does not provide an exemption for leased pallets since title to the leased pallets remains with the lessor.

Limits the exemption to products sold along with exempt food products which serve a beneficial purpose to the ultimate consumer.

**D. Statutory or Regulatory Change**

No statutory change is necessary, however, this recommendation would require a regulatory change.

**E. Administrative Impact**

Affected taxpayers and staff would need to be notified.

**F. Fiscal Impact**

- **Cost Impact:** Absorbable.
- **Revenue Impact:** See attached Revenue Estimate.

**G. Taxpayer/Customer Impact**

None.

**H. Critical Time Frames**

None.

**VI. Alternative****A. Description of the Alternative**

Amend Regulation 1589 and 1630 as proposed by industry to exempt all returnable and nonreturnable containers as well as gases and preservatives used in the transportation of food for human consumption, and define when a container is not customarily returned.

**B. Pros of the Alternative**

Provides an exemption for the sale of containers and preservatives used in transportation of food products for human consumption and defines when a container is not customarily returned. This would exempt tomato paste bins, reusable leased pallets and other containers not related to food products.

**C. Cons of the Alternative**

This alternative would be inconsistent with existing statute and could extend the exemption for the sale of containers beyond the expressed intent of industry.

**D. Statutory or Regulatory Change**

The amendment would require a statutory change prior to the regulatory change.

**E. Administrative Impact**

Affected taxpayers and staff would need to be notified.

**F. Fiscal Impact**

- **Cost impact:** Absorbable.
- **Revenue Impact:** See attached Revenue Estimate.

**G. Taxpayer/Customer Impact**

None.

**H. Critical Time Frames**

None.

Prepared by: Program Planning Division, Sales and Use Tax Department  
Current as of: April 30, 1999



BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

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**REGULATION 1589 – CONTAINERS AND LABELS  
AND REGULATION 1630 –  
PACKERS, LOADERS, AND SHIPPERS  
ISSUE PAPER NUMBER 99-014**

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**Proposals**

This issue paper deals with two proposals concerning the treatment of certain containers and one proposal concerning the treatment of certain preservatives under the sales and use tax law.

**Background, Methodology, and Assumptions**

The first proposal concerning containers would expand the current exemption for containers to all containers used to transport food products. Most such containers are already exempt. The focus of discussions in this area has been on two types of containers.

1. Pallets leased to manufacturers and used to ship food products. Based on information provided by Chep USA, the largest supplier of leased pallets in California, we estimate that tax on these pallets is between \$600,000 and \$1,000,000 annually.
2. Bins used to transport tomato paste. Based on an examination of taxpayer files and on information from one of the primary manufacturers of these bins, we estimate the tax on these bins to be of an order of magnitude of \$500,000 annually.

There could be other containers affected by this proposal but staff is not aware of any besides the pallets and bins discussed above.

The second proposal concerning containers would extend the concept of containers “not customarily returned” to some containers that have previously been considered returnable. This proposal would exempt the above mentioned tomato paste bins but not the pallets.

The proposal, as submitted by industry, is not limited to only containers associated with food for human consumption. Staff is not aware of any other specific instances of container usage that would be covered by the proposal. However, its potential breadth does raise the possibility that other covered instances do exist. Limiting the proposal to containers associated with food for human consumption would eliminate most of the possibility of the proposal extending to situations other than the above mentioned pallets and bins.

Currently ice, dry ice, and carbon dioxide used in packing and shipping food products are exempt. The industry proposal would extend the treatment of those preservatives, which are primarily used in transporting only certain perishables, to all preservatives used in packing and shipping any food product. We have been unable to find a source of data that covers this area. However, by way of illustration, when the legislation exempting carbon dioxide was passed in 1994, it was estimated that the annual tax reduction would be about \$475,000. Carbon dioxide is used primarily in the transportation of berries. It seems likely that extending the exemption to other preservatives used in transporting a variety of food products would increase the tax reduction to several millions of dollars annually.

## **Revenue Summary**

The estimated annual identifiable sales and use tax revenue reduction from the proposal regarding the definition of “not customarily returned” is \$500,000. The estimated additional annual reduction from the proposal regarding the transport of food products is \$600,000-\$1,000,000, for a total of \$1,100,000-\$1,500,000.

The annual revenue reduction of the proposal regarding preservatives is probably several million dollars.

The effect of the proposed amendments to the regulations would be retroactive and would create a potential for refunds for 3 years.

Revenue Estimate

**Qualifying Remarks**

The above mentioned pallets and tomato bins are the only containers that have been identified as being affected by the proposals. Although staff is not aware of other containers that would be affected, if there are other transactions that would be affected, there would be a further revenue reduction.

**Preparation**

This revenue estimate was prepared by Jeff Reynolds, Statistics Section, Agency Planning and Research Division. The estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Freda Orendt-Evans, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Reynolds at (916) 445-0840.

Current as of April 30, 1999

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**

*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(a) DEFINITIONS.</b> The term “containers” as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, and materials from which such containers are manufactured.</p>	<p><b>(a) DEFINITIONS.</b> The term “containers” as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, <u>preservatives</u> and materials from which such containers are manufactured.</p>	<p>No change to the existing regulation.</p>	<p>Staff believes preservatives are not containers since they are not articles in or on which tangible personal property is placed for shipment and delivery. There is already a statutory exemption for ice, and dry ice and carbon dioxide (Section 6359.7 and 6359.8). These and other preservatives are addressed in Regulation 1630. Industry has not expressed opposition to addressing the issue of preservatives within the confines of Regulation 1630 where similar regulatory amendments have been proposed. (See Exhibit 2)</p>
<p>The term “returnable containers” as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of commodities contained herein. A container, title to which is retained by the seller of the contents, or for which a deposit is taken by such seller is a returnable container.</p>	<p>The term “returnable containers” as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of commodities contained herein. A container, title to which is retained by the seller <del>of the contents</del>, or for which a deposit is taken by such seller is a returnable container.</p>	<p>Accept Industry's proposed change to the second sentence.</p>	<p>The strike out in this paragraph may expand the definition of returnable containers, but does not appear to have an effect on the tax application to returnable containers.</p>

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**

*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><u>A container is not customarily returned by the buyer when:</u></p> <p><u>1) the container is sold together with the contents;</u></p> <p><u>2) no deposit is charged on the container;</u></p> <p><u>3) title to the container is not retained;</u></p> <p><u>4) there is no obligation to repurchase the container;</u></p> <p><u>5) the container is of the type that is fungible;</u></p> <p><u>6) the container is repurchased without regard to whether it is the same container originally sold; and</u></p> <p><u>7) the repurchaser of the container is in an industry that includes at least three participants.</u></p>	<p><u>A container used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:</u></p> <p>Accept Industry's proposed language for the first six factors.</p> <p><del>7) the repurchaser of the container is in an industry that includes at least three participants.</del></p>	<p>Staff's proposed language would be appropriate if the Board finds that as a matter of fact within the food industry the containers in question are not customarily returned.</p> <p>Item 7 was added by industry after preliminary discussions with staff. Staff now believes this restriction is not necessary.</p>

Formal Issue Paper Number 99-014 (4/99)  
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**Regulation 1589 — Containers and Labels**

*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><u>Example: A tomato paste processor purchased a new or used container. There are more than three tomato paste processors in the industry. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor, who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. Thus container is not customarily returned by the buyer.</u></p>	<p>Accept Industry's proposed language except for:  <del>There are more than three tomato paste processors in the industry</del></p>	<p>This language is not needed since staff is proposing that item 7 above be removed from the criteria.</p>

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.	Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders <u>and</u> <u>preservatives</u> .	No change to the existing regulation.	Staff believes preservatives are not containers since they are not articles in or on which tangible personal property is placed for shipment and delivery. There is already a statutory exemption for ice and dry ice and carbon dioxide (Section 6359.7 and 6359.8). These and other preservatives are addressed in Regulation 1630. Industry has not expressed opposition to addressing the issue of preservatives within the confines of Regulation 1630 where similar regulatory amendments have been proposed. (See Exhibit 2)
All other containers are "Nonreturnable containers." Examples of Nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.	All other containers are "Nonreturnable containers." Examples of Nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles <u>and</u> <u>preservatives</u> .	Same as above.	
The term "deposit" as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when container or a similar container is delivered to the seller. The term "deposit" as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with Section	The term "deposit" as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when container or a similar container is delivered to the seller. The term "deposit" as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with Section	No change to the existing regulation.	

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.	14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.		
<b>(b) APPLICATION OF TAX</b>	<b>(b) APPLICATION OF TAX</b>		
(1) CONTAINERS. Tax does not apply to sales of:	(1) CONTAINERS <u>EXCEPT FOOD CONTAINERS</u> . Tax does not apply to sales <u>or leases, as defined in Section 6006 of the Revenue and Taxation Code</u> , of:	No change to existing language.	Industry believes the Board has statutory authority to make changes that would exempt the first lease of a returnable container. Since the staff's position is that a statutory change is necessary to incorporate industry's proposed subdivision (b)(2), no change to the existing regulation is recommended by staff.
<b>(A)</b> Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.	<b>(A)</b> Nonreturnable containers when sold <u>or leased</u> without the contents to persons who place the contents in the container and sell the contents together with the container.	Accept industry's proposed language.	Proposed language does not impact the existing regulation since a lease is already defined as a continuing sale in Section 6006.1. Leased containers are generally considered returnable containers and taxable not because they are leased, but because title does not transfer



Formal Issue Paper Number 99-014 (4/99)  
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**Regulation 1589 — Containers and Labels**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(B)</b> Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.</p>	<p><del><b>(B)</b> Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.</del></p>	<p>No change to the existing regulation.</p>	<p>(i.e., title is retained by lessor).</p> <p>Industry's proposal is to replace this subdivision with the proposed subdivision (b)(2). Industry believes the Board has statutory authority to make changes that would exempt the first lease of a returnable container. Staff believes the proposed subdivision (b)(2) below would require a statutory change and, therefore, recommends this paragraph remain unchanged.</p>
<p><b>(C)</b> Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling.</p>	<p><del><b>(C)</b></del> <b>(B)</b> Returnable containers when sold <u>or leased</u> with the contents in connection with a retail sale of the contents, or when resold for refilling.</p>	<p><b>(C)</b> Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. <u>In the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the container for refilling for sale with the contents is not taxable.</u></p>	<p>Industry proposed language does not impact the existing regulation since a lease is already defined as a continuing sale in Section 6006.1. After discussion with industry, this section is not as clear as would be preferred, therefore staff has recommended language intended to clarify the existing regulation with respect to the application of tax to leased containers. Staff is also recommending establishing a minimum term upon which tax applies on the first lease.</p>

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(D)</b> All containers when sold with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.</p>	<p><del>(D)</del> <b>(C)</b> All containers when sold <u>or leased</u> with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.</p> <p><u>(2) FOOD CONTAINERS. Tax does not apply to sales or lease as defined in Section 6006 of the Revenue and Taxation Code of containers used for food as defined in Sections 6358 and 6359, as follows:</u></p> <p><u><b>(A)</b> Containers when sold or leased without the contents to persons who place food products for human consumption in the container for shipment and delivery and/ or for subsequent sale.</u></p> <p><u><b>(B)</b> Containers when sold or leased with food products for human consumption in the container.</u></p>	<p>Accept industry's proposed language.</p> <p>No change to existing regulation.</p> <p>No change to existing regulation.</p> <p>No change to existing regulation.</p>	<p>Proposed language does not impact the existing regulation since a lease is already defined as a continuing sale in Section 6006.1.</p> <p>Subdivision (b)(2), (b)(2)(A) and (b)(2)(B) proposed by industry would exempt all food containers. Staff believes statutory change would be required before this proposal could be included in the regulation. The statute specifically does not provide for the exemption of returnable containers.</p>
<p>Tax applies to all other sales of containers except sales for the purpose of resale to other</p>	<p>Tax applies to all other sales of containers except sales for the purpose of resale to other</p>	<p>No change to existing regulation.</p>	<p>Industry has proposed no changes.</p>

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**Regulation 1589 — Containers and Labels**

*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p>sellers of containers who purchase them or resale without the contents.</p> <p>Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to , blood collection units and blood pack units.</p> <p>Deposits as defined herein are not taxable.</p> <p>(2) LABELS. Tax does not apply to sales of labels or name-plates if:</p> <p><b>(A)</b> The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of name-plates of manufacturers or producers which are permanently affixed to each unit of product sold, such as automobiles and machinery.</p>	<p>sellers of containers who purchase them or resale without the contents.</p> <p>Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to , blood collection units and blood pack units.</p> <p>Deposits as defined herein are not taxable.</p> <p><del>{2}</del> (3) LABELS. Tax does not apply to sales of labels or name-plates if:</p> <p><b>(A)</b> The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of name-plates of manufacturers or producers which are permanently affixed to each unit of product sold, such as automobiles and machinery.</p>	<p>No change to existing regulation.</p>	

Formal Issue Paper Number 99-014 (4/99)  
Comparison Table

**Regulation 1589 — Containers and Labels**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(B)</b> The purchaser affixes them to Nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.</p>	<p><b>(B)</b> The purchaser affixes them to Nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.</p>	<p>No change to the existing regulation.</p>	

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(a) IN GENERAL – DEFINITIONS.</b> Packers, loaders, and shippers (hereinafter collectively called “shippers”) purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:</p> <p>(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.</p> <p>Bracing materials Car strips Cleaning compounds Degreasing compounds derusting compounds Dunnage or “loose” Lumber (except as otherwise specified in (2) below) Gas (including dispensers) Ice and dry ice Miscellaneous preservatives Rust preventing compounds Salt Solvents Tarpaulin (weather protection)</p>	<p><b>(a) IN GENERAL – DEFINITIONS.</b> Packers, loaders, and shippers (hereinafter collectively called “shippers”) purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:</p> <p>(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.</p> <p>Bracing materials Car strips Cleaning compounds Degreasing compounds derusting compounds Dunnage or “loose” Lumber (except as otherwise specified in (2) below) Gas (including dispensers) Ice and dry ice <del>Miscellaneous preservatives</del> Rust preventing compounds Salt Solvents Tarpaulin (weather protection)</p>	<p>No change to existing regulation.</p> <p>No change to existing regulation</p>	<p>Industry has proposed no changes.</p> <p>Industry proposed deletion of miscellaneous preservatives from this subsection to resolve any potential confusion that may be created by their</p>

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.</p> <p>bags barrels bottles boxes cans carboys cartons crates cylinders drums excelsior and other packing and crating material gummed tape kegs lumber (including "loose" lumber used in the same manner and for the same purpose as pallets)</p> <p>pallets sacks</p>	<p>(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.</p> <p>bags barrels bottles boxes cans carboys cartons crates cylinders drums excelsior and other packing and crating material gummed tape kegs lumber (including "loose" lumber used in the same manner and for the same purpose as pallets) <u>miscellaneous preservatives such as salts, acids, caustics, etc.</u> <u>wax and fungicide used as a post harvest protective shield</u> pallets sacks</p>	<p>No change to existing regulation.</p>	<p>proposal to include miscellaneous preservatives in subsection (a)(2).</p> <p>Industry believes existing statutes allow miscellaneous preservatives to be added to the list of property used as containers in the regulation. Although the sale of a preservative that is incorporated into the product</p>

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**

*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
strapping twine wrapping paper	strapping twine wrapping paper		and ultimately sold with the product is not subject to tax because it is a sale for resale, staff believes the statute does not provide an exemption for preservatives used to condition, preserve, or protect goods during shipment without becoming physically incorporated in the finished product being sold, other than ice, dry ice and carbon dioxide. Section 6364.7 and 6364.8 were specifically added to the statute to exempt only these three items used to condition, preserve or protect food for human consumption during shipment.
		<p><u>(3) PROPERTY THAT WHEN PHYSICALLY INCORPORATED IN THE FINAL PRODUCT BEING SOLD IS A SALE FOR RESALE.</u></p> <p><u>wax and fungicide</u> <u>post harvest protective shields</u> <u>protective coatings</u> <u>salts, acids &amp; caustics</u></p>	Staff has recommended subdivision (3) be added to the regulation to clarify the existing application of tax.
<b>(b) APPLICATION OF TAX.</b>	<b>(b) APPLICATION OF TAX.</b>	No change to existing regulation.	Industry has proposed no changes.

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.</p> <p><b>(A) General.</b> Tax applies to the sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.</p>	<p>(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.</p> <p><b>(A) General.</b> Tax applies to the sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.</p>		



Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p><b>(B) Ice and Carbon Dioxide.</b></p> <p>1. Ice. The sale or use of ice or dry ice, used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.</p> <p>2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the</p>	<p><b>(B) <del>Ice and Carbon Dioxide.</del> <u>Preservatives</u></b></p> <p>1. <del>Ice.</del> <u>Miscellaneous preservatives, including gas.</u> <del>The sale or use of ice or dry ice,</del> used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.</p> <p>2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the</p>	<p>No change to existing regulation.</p> <p>No change to existing regulation.</p>	<p>Industry believes existing statutes allow for the requested preservatives and gases to be added to the regulation. Staff believes section 6359.7 limits the exemption in this subsection to ice and dry ice only.</p> <p>Industry has proposed no changes.</p>

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
package that contains the carbon dioxide.	<p>package that contains the carbon dioxide.</p> <p><del>3. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:</del></p> <p><del>(a) The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or</del></p>	<p>package that contains the carbon dioxide.</p> <p><u>Tax does not apply to the sale or purchase of preservative products that remain in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.</u></p>	<p><b>Staff recommended language to address concept proposed by industry.</b> Staff believes a statutory change is required to exempt preservatives that are not physically incorporated into the food product being sold or do not remain in the packaged food product until opened by the ultimate consumer.</p> <p>Staff agrees with the proposed language to clarify existing law.</p>

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><del>similar products:</del></p> <p><del>(b)The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.</del></p>		Industry has proposed no changes.
<p>(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.</p> <p><b>(A) General.</b> Tax applies to the sale or use of containers or container materials under the provisions of regulation 1589, "Containers and Labels", (18CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the</p>	<p>(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.</p> <p><b>(A) General.</b> Tax applies to the sale or use of containers or container materials under the provisions of regulation 1589, "Containers and Labels", (18CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the</p>	No change to existing regulation.	Industry has proposed no changes.

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p>contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sales unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper T reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier for the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.</p>	<p>contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sales unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier for the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.</p>		
<p><b>(B) Carbon Dioxide.</b> Operative January 1, 1995, the sale or use of nonreturnable</p>	<p><b>(B) Carbon Dioxide.</b> Operative January 1, 1995, the sale or use of nonreturnable</p>	<p>No change to existing regulation.</p>	<p>Industry has proposed no changes.</p>

Formal Issue Paper Number 99-014 (5/99)  
Comparison Table

**Regulation 1630 — Packers, Loaders, and Shippers**  
*Comparison Between Staff's Version and the Industry's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff's Proposed Regulatory Language	Staff Recommendation and Comments
<p>container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in interstate, interstate, or foreign commerce by common carriers, contract carriers of proprietary carriers, whether or not the shipper is the seller of the fruit or vegetables.</p> <p><b>(C) Packing Food Products for Human Consumption.</b> Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.</p>	<p>container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in interstate, interstate, or foreign commerce by common carriers, contract carriers of proprietary carriers, whether or not the shipper is the seller of the fruit or vegetables.</p> <p><b>(C) Packing Food Products for Human Consumption.</b> Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.</p>	<p>No change to existing regulation.</p>	<p>Industry has proposed no changes.</p> <p>Current as of May 5, 1999</p>